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LADAS & PARRY
224 SOUTH MICHIGAN AVENUE, SUITE 1200
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OFFICE OF PETITIONS

In re Application of :
Jang-Keun Oh :
Application No. 10/053,839 : ON PETITION
Filed January 22, 2002 :
Attorney Docket No. AB-1114 US :

This is a decision on the petition under 37 CFR 1.10 filed, March 9, 2004.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.10."

The instant petition was filed to correct what petitioner believed was an incorrect filing date accorded the above-cited application. Petitioner maintains that the correct filing date for the application should be October 22, 2001, not the currently accorded date of January 22, 2002. In support thereof, petitioner filed a copy of the Track and Confirm sheet from the United States Post Office website showing a package with label EL699358526US as being enroute on October 22, 2001, but not being delivered at the United States Patent and Trademark Office until January 23, 2002. The subject Express Mail number was also found on the transmittal sheet that accompanied the original application papers.

Section 1.10(a) of the Title 37 of the Code of Federal Regulations indicates that correspondence received by the Patent and Trademark Office that was delivered by Express Mail will be considered filed in the Office on the date of deposit with the United States Postal Service. Where there is a discrepancy between the date of deposit as shown on the Express Mail label and the filing date accorded the correspondence by the Office, 37 CFR 1.10(c) provides that an applicant may petition to have the Commissioner accord the correspondence a filing date as of the "date in" on Express Mail label. In accordance with 37 CFR 1.10(c), a successful petition must:

- (1) . . . be filed promptly after the person becomes aware that the Office has accorded or will accord a filing date other than the USPS deposit date;

2) [provide] the number on the Express Mail mailing label was placed on a paper(s) or fee(s) that constituted the correspondence prior to the original mailing by Express Mail; and

(3) . . . include a true copy of the Express Mail mailing label showing the date-in and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition does not satisfy the requirements of item (1) and (3) above.

As to item (1) above, it is noted that more than two years has passed since the filing date of January 22, 2002, was accorded the application, however; no request from petitioner to correct the filing date has was noted prior to the recent filing on March 9, 2004. The applicable rule requires that a petition to correct the filing date be filed promptly after the applicant becomes aware that the Office has accorded, or will accord, a filing date other than the USPS date. With any renewed petition filed, petitioner must detail when petitioner became aware of the alleged incorrect filing date so that it can be determined whether the instant petition was promptly filed thereafter.


As to item (3) above, Section 1.10(c)(3) requires that a copy of the "Express Mail" label showing the "date-in" and of any other official notification by the USPS relied upon to show the date of deposit accompany the petition. The Track and Confirm sheet is noted, however, a copy of the "Express Mail label" was not found among the petition papers. In addition to providing a copy of the "Express Mail" label, it is requested that petitioner explain what petitioner believes that it took three months for the subject Express Mail package to reach the Patent and Trademark Office, especially considering that the standard delivery time for such packages is one business day.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 Box 1450
 Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions